

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ANGELICA MARTINEZ,

Defendant and Appellant.

B215377

(Los Angeles County  
Super. Ct. No. KA080500)

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Wade D. Olson, Judge. Affirmed.

Law Offices of Fred Thiagarajah and Fred Thiagarajah for Defendant and  
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Keith H. Borjon  
and Joseph P. Lee, Deputy Attorneys General, for Plaintiff and Respondent.

---

Appellant Angelica Martinez appeals from the judgment entered following the trial court's order revoking her probation. Appellant pled guilty to count 1, possession of narcotics for sale (Health & Saf. Code, § 11351),<sup>1</sup> and count 2, possession of a controlled substance for sale (§ 11378). The trial court suspended imposition of sentence and placed appellant on probation. On February 6, 2009, the trial court found appellant in violation of probation and imposed the previously suspended prison sentence of four years eight months consisting of four years as to count 1, and eight months (one-third the midterm of 24 months) as to count 2.

Appellant contends that the trial court abused its discretion in finding a probation violation based on her discharge from a residential treatment program and on her failure to perform community service. We affirm.

### **FACTS AND PROCEDURAL BACKGROUND**

On May 8, 2008, appellant was placed on probation and ordered to, among other things, complete 87 days of Caltrans community service work, not use or possess drugs, submit to drug testing, cooperate with the probation officer in a plan for a drug counseling program, maintain her residence as approved by the probation officer, and obey all rules and regulations of the probation department.

On October 2, 2008, appellant was found in violation of probation for testing positive for PCP. Probation was reinstated and modified. Appellant was ordered to serve an additional 365 days less credit in a residential drug treatment program in lieu of county jail, in addition to the original terms and conditions of probation, including the 87 days of community service.

On February 6, 2009, the trial court held another probation violation hearing. Kim Sherow (Sherow), appellant's probation officer, testified that she was assigned to appellant in November 2008. Sherow testified that appellant never completed or enrolled in Caltrans community service work. Nor did appellant keep Sherow apprised of her

---

<sup>1</sup> All further statutory references are to the Health and Safety Code unless otherwise indicated.

residence as required under the probation conditions. Appellant enrolled in a residential drug treatment program at Pacifica House from December 3, 2008 to December 24, 2008. Sherow stated that she called Pacifica House while working on appellant's progress report and was informed that appellant had been discharged for a major infraction of house rules, i.e., having a male acquaintance in her room. Appellant did not advise Sherow that she had been discharged from Pacifica House.

Sherow testified that immediately before the probation violation hearing, appellant's mother gave her a letter informing her that appellant was accepted into another program called Clean and Serene, where she was enrolled from December 24, 2008 to January 12, 2009. Sherow stated that on January 12, 2009, Shiloh House sent Sherow a letter regarding appellant's enrollment in its program.

Holly Still (Still), a supervisor at Pacifica House, testified at the probation violation hearing that appellant was discharged from the program on December 24, 2008 for having a male visitor in her room. Appellant refused to respond to Still's questions about the visitor. Still asked a staff member to interview appellant and another staff member to interview the visitor and one of appellant's roommates.

Appellant testified at the probation violation hearing that she had met the male visitor through the drug treatment program at Pacifica House but did not invite him into her room and had asked him to leave.

The trial court found appellant in violation of probation and imposed the previously suspended sentence.

## **DISCUSSION**

### **The trial court did not abuse its discretion in finding appellant in violation of probation**

Appellant contends that the trial court abused its discretion in finding a probation violation based on appellant's ejection from a residential treatment program and appellant's failure to perform community service by December 19, 2008. We disagree.

A court may revoke probation "if the interests of justice so require and the court, in its judgment, has reason to believe from the report of the probation officer or otherwise

that the person has violated any of the conditions of his or her probation. . . .” (Pen. Code, § 1203.2, subd. (a).) The determination whether to revoke probation is largely discretionary. (*In re Coughlin* (1976) 16 Cal.3d 52, 56.) “[T]he facts supporting revocation of probation may be proven by a preponderance of the evidence.” (*People v. Rodriguez* (1990) 51 Cal.3d 437, 439.) We review the trial court’s probation decisions for abuse of discretion. (*People v. Robart* (1973) 29 Cal.App.3d 891, 893.)

The record shows that appellant was found to have violated probation by failing to complete community service and for being discharged from Pacifica House for a major infraction of house rules. Additionally, Sherow testified that appellant failed to contact her when she changed her residence, in violation of probation department rules.

Appellant contends that the trial court abused its discretion in finding a probation violation based on her discharge from Pacifica House because the People failed to show that appellant was *properly* discharged. Appellant claims that because she testified that the male visitor was in her room without her consent, she did not voluntarily violate Pacifica House’s rules, and therefore her discharge was unwarranted. We reject appellant’s attempt to frame the People’s burden as requiring it to show that Pacifica House *properly* discharged appellant from the program. As the trial court found, the People’s burden was merely to show that appellant was in fact discharged from the program. As the trial court noted, Pacifica House discharged her after an investigation which concluded that she violated the rules and regulations of the program.

Appellant also argues that Sherow gave conflicting evidence as to whether appellant was in violation of her probation based on her failure to perform community service. She claims that at one point Sherow stated that appellant was in compliance with all the terms of her probation as of December 19, 2008, but at another point she testified she was in violation of probation. She urges that Sherow made inconsistent statements about whether there was a 30-day deadline to show proof of community service enrollment. Our review of the record shows that Sherow merely clarified her initial responses upon further questioning. She testified that since December 19, 2008, appellant had violated probation by being kicked out of Pacifica House and failing to

perform community service. Sherow also testified that appellant had 30 days from the date that she signed her probation instructions to perform her community service, which she did not do. That Sherow clarified partial answers does not convince us that the trial court abused its discretion in concluding that appellant violated the terms of her probation.

Finally, appellant contends that the trial court was biased against appellant because the trial court found that the People had proved its case beyond a reasonable doubt, when the People had not even established its case by a preponderance of the evidence. We disagree. The trial court carefully considered the testimony in the probation violation hearing prior to finding appellant in violation of probation and imposing her suspended sentence. Furthermore, any claim of bias fails because the record shows that the trial court showed leniency to appellant in the first place by reinstating probation after her drug violation on October 2, 2008.

We conclude that the trial court did not abuse its discretion in finding appellant in violation of probation.

#### **DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
DOI TODD

We concur:

\_\_\_\_\_, P. J.  
BOREN

\_\_\_\_\_, J.  
ASHMANN-GERST